

From: Brian Cohn [mailto:beecohn@gmail.com]
Sent: Monday, November 02, 2009 11:33 AM
To: Trumbo,Holder; Burke, Kevin; Johnson, Kim; Andersen, Renee
Subject: Agenda Request: Fauquier Lakes LP, Appeal Director Carr Determination Letter

To: Fauquier County:

Please accept this November 12th BOS agenda request discussed with Supervisor Trumbo.

Attached is the request, the justification, and the letter from Director Carr.

This is the CONTACT INFORMATION
Fauquier Lakes, LP
7076 Lake Drive, Warrenton, VA 20187
Brian Cohn, Ed Moore, Weston Kennedy
Contact Ph# 202-345-3901

Thank you,
Fauquier Lakes, LP
Brian Cohn

AGENDA REQUEST: BOS meeting November 12, 2009

RE: Appeal to BOS of the Determination Letter from Community Development Director Carr dated October 8, 2009.

Whereas; on April 15th, 2009, the Applicant, Fauquier Lakes Limited Partnership, submitted a construction plan for Phases 12, 13, 15 (the “Construction Plans”)

Whereas; on June 6, 2009, Fauquier County Department of Community Development (“DCD”) issued a Construction Plan Comment Letter and DCD cited eight (8) potential deviations (the “Eight Potential Deviations”) from the approved CDP and PP.

Whereas; on September 1, 2009 Applicant submitted a letter to DCD –

- A) requesting concurrence of the fact that the BOS Lake Drive resolution specifically stated that no CDP or PP revision was required to accommodate the BOS mandated changes, and
- B) requesting concurrence that no CDP or PP revision was required because the Eight Potential Deviations were in fact not deviations, or that under PRD Section 4-115 of the County Subdivision Ordinance, **such deviations are NECESSARY due** to the requirements of topography, drainage, structural safety or vehicular circulation.

Whereas; on October 8, 2009 DCD issued a Determination Letter from Community Development Director Carr that we believe mistakenly determined that a CDP or PP revisions were required, and failed to separately address any of the DCD issues, failed to consider the Lake Drive BOS Resolution, and failed to provide relief under Section under PRD Section 4-115 that is designed to provide flexibility to the Department of Community Development in such situations.

Whereas; the Applicant was instructed by Director Carr’s determination letter to appeal to the BOS.

Whereas; Director Carr’s Determination Letter stated “My determination in these matters constitutes a final decision pursuant to Section 15.2-2292 of the Code of Virginia. If you disagree with the decision, it must be appealed to the Board of Supervisors...” The Determination Letter was signed by R. Carr, Director, Fauquier County Department of Community Development

Whereas; Section 15.2-2292 is the VA Code provision concerns family day homes and not conformance with the BOS Lake Drive Resolution or PRD deviation determination letters.

Whereas; Director Carr’s Determination Letter requires revisions to the CDP and PP, which may have the unintended consequence of creating VDOT required through street connections where cul-de-sac roads exist in adjacent existing subdivisions, including through street connections through Grapewood Estates, Rock Springs, Lakewood, etc.

Whereas; Director Carr's Determination Letter requires revisions to the CDP and PP which which may have the unintended consequence of creating VDOT required through street connections where cul-de-sac roads were created by the BOS Lake Drive Resolution, in Phases 10 and 11, and thus overriding the BOS action mandating cul-de-sacs, including through streets to Mallard Ct. and Wintergreen Ct.

Whereas; if the BOS is of the opinion that the Eight Potential Deviations are in fact deviations, then Applicant requests that the BOS determine -

Option #1) such deviations are necessary to comply to the BOS action that mandated the Lake Drive Alignment and cul-de-sacs, which same **BOS mandate includes that any such deviation not require a CDP or PP revision,** and

Option #2) if any other items are in fact deviations, then the specific wording of the BOS adopted subdivision ordinances permits such deviations under PRD Section 4-115

*"Minor deviations from the approved Concept Development Plan and Code of Development may be permitted when the Director determines that **such deviations are NECESSARY due** to the requirements of **topography, drainage, structural safety or vehicular circulation** and such deviations will not materially alter the character of the proposed development, including the proposed development phasing and does not violate other binding components of the Plan including approved Proffers." SOURCE: COUNTY SUBDIVISION ORDINANCE*

Now therefore we hereby request; that if the BOS determines that any one or more of the Eight Potential Deviations are deviations, the Applicant can reserve its rights under Virginia Code to amend its Construction Plans and resubmit them and not be forced by DCD and Director Carr to revise the CDP and PP.

Now therefore we hereby request; the BOS affirm this appeal and administratively or by BOS action determine that

- A) that Option #1) and or Option #2) above applies to each of the Eight Potential Deviations, and that the Phase 12, 13, 15 Construction Plan is in "substantial conformance" with the CDP and PP, and
- B) if any deviations exist that they are "necessary" under PRD Section 4-115, and or required under the BOS Lake Drive Resolution, and that the Phase 12, 13, 15 Construction Plan is in "substantial conformance", or
- C) if any deviations exist, SECTION 15.2-2302 of the Code of Virginia allows action of the Board of Supervisors for the amendment of proffers (in this case amending the proffers to permit the Phase 12, 13, 15 Construction Plan to be approved as presently submitted) the not related to use or density on an approved rezoning.

Please address this at the November BOS meeting to avoid any additional approval delay of the vital infrastructure included in this April 15th 2009 Construction Plan submission.

Justification:

Carr's Determination Letter does not directly address Brookside's request, although it is written in response to our September 1, 2009 letter requesting concurrence of minor deviation on all Eight Potential Deviations listed in the formal June 6 County Comment Letter. Rather Carr's Determination Letter details previously undocumented concerns (not included in DCD's June 6, 2009 formal Comment Letter) regarding the engineering of Brookside Parkway as well as the location of the commercial center (which is not even included on the plans under review).

Director Carr's October 8th letter does not address September 1st 2009 request regarding individual items of potential non-concurrence, includes new broad brush comments not included in the original submission comments, and Brookside's continues to disagree with Director Carr's position that either of the above items are true (Brookside Parkway has not changed its nature from the governing documents, nor has the location of the commercial center changed substantially or even included in the submission under review.)

We request that the Board of Supervisors review each of the Eight Potential Deviations listed in the formal County comment letter (and our attached justification according to the PRD as to if they are deviations why they should be found to be minor deviations or necessary to comply with the Lake Drive BOS Resolution), and rule on these eight items individually as to whether or not they are substantial deviations from the approved documents. The Eight Potential Deviations from the Comment Letter and a detailed analysis of each are attached for your review and consideration.

Brookside has repeatedly asked that specific, individual comments regarding non-conformance items be provided by staff, rather than repeatedly stating that a CDP/PP amendment is required just to "freshen things up."

As required by Virginia Code, an applicant is to be afforded the opportunity to address individual comments in such a way that the comments are either resolved or the concerning item removed from the Construction Plan. In this way the decision regarding revision of governing documents resides with the Applicant.

By not being definitive with the items that are causing the perceived lack of compliance (or rather by first being definitive in the original comment letter and then being unspecific in response to our Lake Drive BOS Resolution concurrence, and or minor deviation concurrence request by responding with new general, broad brush items), Brookside is being denied its rights under the Virginia code. The impact of this exercise is the continued delay of desperately needed public infrastructure, the continued lack of work for local citizens, and the excess of unnecessary meetings, expense, delay, and paperwork, not to mention BOS time and attention.

In closing, we understand Chairman Trumbo is working with Director Carr to schedule a sit down meeting on this topic between Chairman Trumbo, Community Development and Brookside, but as our request for this meeting has been outstanding for a number

of weeks we felt it prudent to register our formal appeal prior to the expiration of the above window.

Thank you for your expeditious consideration of this request.

From: Brian Cohn [mailto:beecohn@gmail.com]
Sent: Tuesday, November 03, 2009 9:50 AM
To: Burke, Kevin; Johnson, Kim
Subject: Fauquier Lakes CDP PP

Kim and Kevin,

For ease of access, please see the excerpts below from the governing approvals in order to guide the formation of the background and justification in support of approving the CDP and PP substantial conformance.

Thank you,
Brian
202-345-3901

BOS Agenda Item: Fauquier Lakes CDP PP Substantial Conformance
Applicant: Fauquier Lakes Limited Partnership
Construction Plans: Phase 12, 13, 15, Brookside Farm PRD

The Brookside Farm PRD Proffers, CDP and PP were approved by the Fauquier County BOS unanimously in May 2002. First they were approved on 5-20-2002, after more than a year of review and public hearings, and the PRD's Preliminary Plan revised and approved unanimously again in September 2002. The roads went before the BOS again in December 2002 with the unanimously approved Lake Drive BOS Resolution. A master planned community, the project is actively developing and relies heavily on the vesting of its approvals.

- 1) As per the PRD's approved May 2002 Proffers, the BOS's could request Lake Dr. and other road changes. The BOS Dec. 2002 Resolution did mandate road certain CDP and PP changes. That section of the PRD's Proffers also states that these changes would not require a CDP Amendment. Therefore, the Applicants compliance with the BOS Lake Drive mandate should not require a CDP Amendment.
- 2) As per the PRD's Preliminary Plan, Construction Plans can conform to wetlands and wet soils and notably lots may be relocated, which equates to road adjustments. Therefore, the PRD's mitigation of environmental impacts should not require a Preliminary Plan Revision.
- 3) The submitted roads are at the center of the project. No adjacent cul-de-sacs nor are any existing VDOT roads are impacted. Staff's recent construction plan approval of the adjacent phase permitted the deletion of two Brookside Parkway intersections without CDP or a PP revision. Therefore, in order for the BOS and Applicant to be able to rely on Community Development's consistent judgments and opinions, the submission should not require a PP Revision or CDP Amendment.
- 4) The BOS Lake Dr. Resolution and the submission show Lake Drive as a dead end. Lake Drive does not connect directly to the Parkway, but intersects Shepardstown Rd in the location of the existing farm roads to minimize environmental impacts to trees, topo, and wetlands. The submission also shows that Shepardstown Road is not moved, shortened nor lengthened. Therefore, the Applicant's compliance with the BOS Lake Drive mandate should not require a PP Revision or a CDP Amendment.
- 5) Subdivision Ordinance Section 4-115 allows special flexibility for Planned Residential Developments, that was neither mentioned nor offered to the Applicant during the plan review. *"Minor deviations from the approved Concept Development Plan and Code of Development may be permitted when the Director determines that **such deviations are NECESSARY due** to the requirements of **topography, drainage, structural safety or vehicular circulation** and such deviations will not materially alter the character of the proposed development, including the proposed development phasing and does not violate other binding components of the Plan including approved Proffers."* SOURCE: COUNTY SUBDIVISION ORDINANCE As per Section 4-115, the Director should have specifically addressed Applicant's request and determined the construction plan submission is in substantial conformance with the CDP and PP or such deviation "necessary." The Director's could have cited the very same environmental, road and other improvements that the

Determination Letter and Staff's attached Comment Letter highlighted and commended the Applicant for submitting.

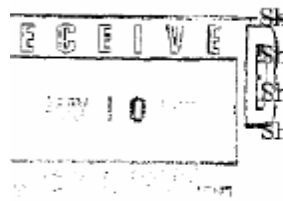
RECCOMENDATION: For the above reasons, the BOS should expeditiously provide the Applicant with due consideration by approving Applicant's request to the Director and determine that the submission is in substantial conformance with the PP and CDP.

Original Submission May 18, 2001
Revised December 4, 2001
Revised March 1, 2002
Revised April 1, 2002
Revised May 9, 2002

**BROOKSIDE FARM
PRD REVISED REZONING PROFFERS**

Fauquier Lakes Limited Partnership, the sole owner of the property and Applicant in the original Waterfield rezoning application (hereinafter "**BROOKSIDE FARM PRD**" or "**The Applicant**"), hereby proffers that in the event the existing proffers (the "Existing Proffers") applicable to the subject property, which was rezoned by the Fauquier County Board of Supervisors (hereinafter referred to as the "**COUNTY**" or "**BOARD**") in case number RZ 96-S-05, to a PRD district, are revised as proffered herein (hereinafter "Revised Proffers"), then the development of the property shall be in substantial conformance with these Revised Proffers. Uses and densities shall be set forth in these Revised Proffers, those Waivers, Modifications and Exceptions set forth in the Compilation of Requested Zoning Ordinance and Subdivision Ordinance Waiver Modifications and Exceptions dated May 9, 2002, which have been or are hereby approved by the Board of Supervisors, and also in substantial conformance with the Concept Development Plan dated May 18, 2001, as revised December 4, 2001, March 1, 2002, April 1, 2002 and May 9, 2002, as prepared by The Engineering Groupe, Inc. (the "**Concept Development Plan**" or **CDP**) and with the following conditions, pursuant to Section 15.2-2286 of the 1950 Code of Virginia, as amended, and Article 4, Sections 4-101 through 4-115, inclusive, of the Zoning Ordinance of Fauquier County, Virginia, and unless modified herein, shall be in accordance with all applicable provisions of the Zoning, Subdivision, and other development Ordinances. These proffers include the dedication of real property and are thus subject to the conditions set forth in Virginia Code, Section 15.2-2298 B.

The Brookside Farm Concept Development Plan dated May 18, 2001, most recently revised and stamped May 9, 2002, as prepared by The Engineering Groupe, Inc. as referred to in these Revised Proffers consists only of:



Sheet 1
Sheet 2
Sheet 3
Sheet 4

Land Bays
Open Space / Wetlands and Landscaping
Utility and BMP Location Plan
Boundary / Parcel Identification Plan



C. Traffic Calming Measures

2. Final decision as to the minimization of traffic on Lake Drive shall be made at or prior to the final construction plan/final plat stage. Options for minimization shall include but not be limited to the following options:

Page 9 of 16

eliminating the wetlands/bridge crossings which result in neighborhood street connections to Lake Drive, four way stops and other traffic calming measures. Final minimization decisions shall be made by the Board of Supervisors, within 45 days of a specific written request by Applicant for such a decision. If the Board fails to act within the 45 day period, then the approval of these proffers shall govern. Any changes mandated by the Board shall not operate to effectively isolate one portion of the Entire Project from the others (i.e. all of the through streets from Lake Drive cannot be cul-de-saced) and shall not be considered a substantial deviation from the Concept Development Plan requiring amendment.

Source: BOS Minutes Excerpts

**A REGULAR MEETING OF THE FAUQUIER COUNTY BOARD OF SUPERVISORS
WAS HELD SEPTEMBER 16, 2002 AT 1:00 P.M. IN WARRENTON, VIRGINIA**

P R E S E N T Mr. Raymond Graham, Chairman; Ms. Sharon McCamy, Vice Chairman;
Mr. Harry Atherton; Mr. Joe Winkelmann; Mr. Larry L. Weeks; Mr. G.
Robert Lee, County Administrator; Mr. Paul S. McCulla, County Attorney

- Include Preliminary Subdivision Plat Revision Application – Brookside as an addition to the Regular Agenda.

PRELIMINARY SUBDIVISION PLAT REVISION APPLICATION – BROOKSIDE

Mr. Weeks moved to adopt the following resolution. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

<i>Ayes:</i>	<i>Mr. Raymond Graham; Ms. Sharon McCamy; Mr. Harry Atherton; Mr. Larry L. Weeks; Mr. Joe Winkelmann</i>
<i>Nays:</i>	<i>None</i>
<i>Absent During Vote:</i>	<i>None</i>
<i>Abstention:</i>	<i>None</i>

RESOLUTION

**A RESOLUTION TO APPROVE PRELIMINARY PLAT REVISION
#PPR02-S-03 – BROOKSIDE**

WHEREAS, Brookside Communities, LLC, and Brookside Development, LLC, owners and applicants, have submitted a preliminary subdivision plat revision for the Brookside Subdivision; and

WHEREAS, the Fauquier County Planning Commission voted to approve Preliminary Plat Revision #PPR02-S-03 – Brookside; and

WHEREAS, the Fauquier County Board of Supervisors has considered the referenced preliminary subdivision plat revision at its meeting on September 16, 2002; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 16th day of September 2002, That the Board does approve Preliminary Plat Revision #PPR02-S-03 – Brookside, subject to the previously approved conditions and the following condition:

51

This approval is for a maximum of 975 lots. These lots shall be located generally as shown on the revised Brookside Preliminary Plat prepared by The Engineering Groupe, Inc., dated June 6, 2002, and received in the Planning Office on June 11, 2002, as modified by the following conditions. However, the lot layout may be arranged to accommodate the removal or relocation of lots that are undesirable due to wetlands and wet soils.

SOURCE Excerpts:

***A REGULAR MEETING OF THE FAUQUIER COUNTY BOARD OF SUPERVISORS
WAS HELD MAY 20, 2002 AT 1:00 P.M. IN WARRENTON, VIRGINIA***

P R E S E N T Mr. Raymond Graham, Chairman; Ms. Sharon McCamy, Vice Chair; Mr. Harry Atherton; Mr. Joe Winkelmann; Mr. Larry L. Weeks; Mr. G. Robert Lee, County Administrator, Mr. J. Randall Wheeler, Deputy County Administrator; Mr. Paul S. McCulla, County Attorney

RESOLUTION

**A RESOLUTION TO APPROVE PRELIMINARY PLAT #PP01-S-08
BROOKSIDE, A PLANNED COMMUNITY**

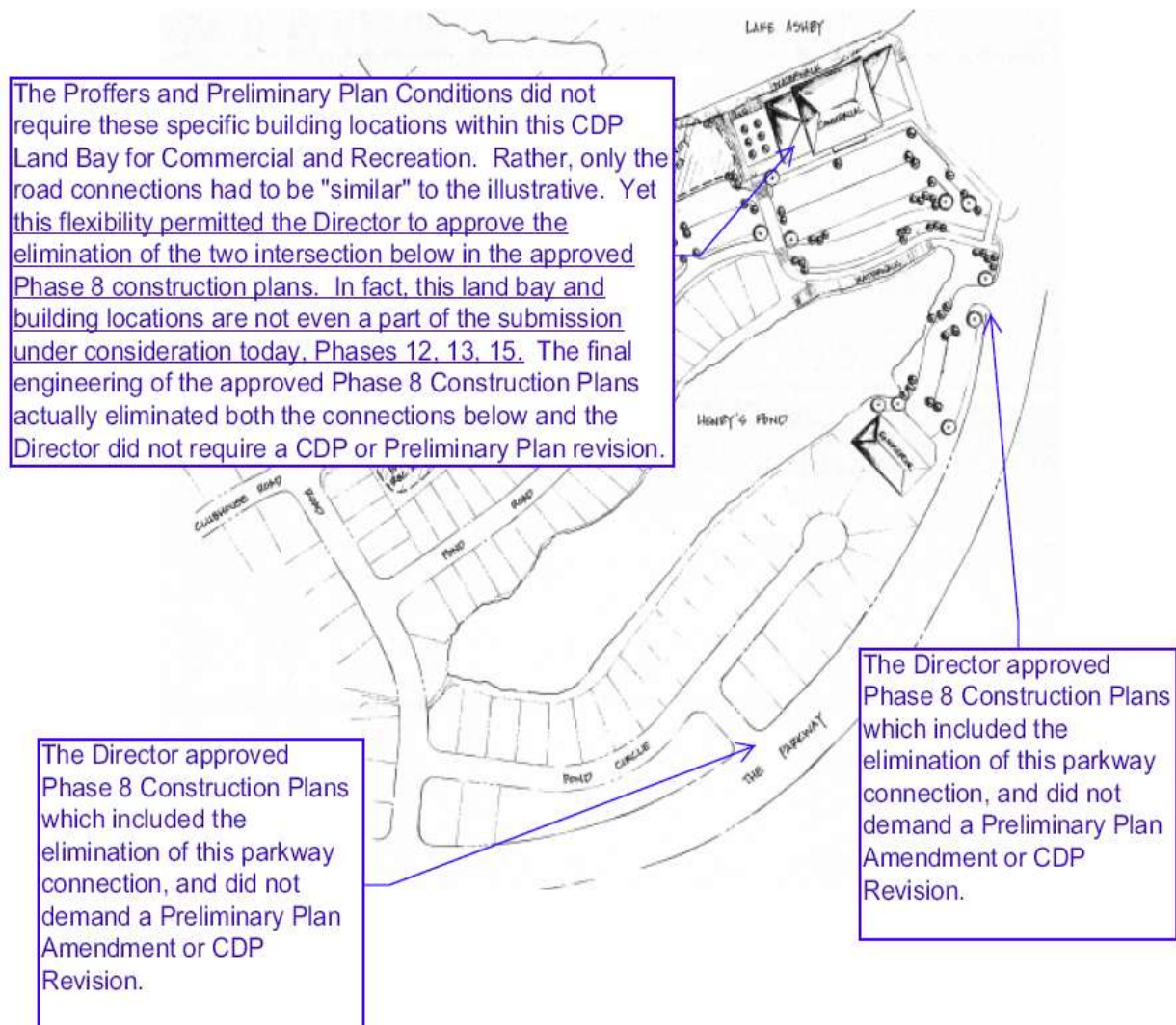
WHEREAS, Brookside Communities, LLC, Brookside Development, LLC, and R.G. Holdings, LP, owners and applicants have submitted a preliminary subdivision for Brookside Farm for 931 single-family lots on Parcel Identification Numbers #7905-93-5747-000, #7915-16-2290-000, #7915-06-7362-000, #7915-34-4195-000, #7915-35-2459-000, #7915-22-4253, #7915-22-0001, #7915-11-7109, #7915-20-3117, #7905-63-8907, #7905-82-5007, #7915-29-7852, #7914-39-3654, #7905-53-4817, #7905-54-1314 and #7915-20-4957; and

WHEREAS, at its meeting on May 20, 2002, the Fauquier County Board of Supervisors approved the companion Comprehensive Plan Amendment, Proffer Statement, Modifications, and Concept Development Amendments and Special Exception applications; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 20th day of May 2002, That the Board does approve Preliminary Plat #PP01-S-08 – Brookside a Planned Community, subject to the following conditions:

1. The final construction plans and record plat shall be in substantial conformance with the preliminary subdivision plat prepared by The Engineering Groupe, Inc. entitled "Brookside a Planned Community " dated December 15, 2000, last revised January 30, 2002. However, the plat may be modified to meet the conditions of this preliminary plat approval or subsequent special exception approvals. Final engineering and environmental analysis shall determine the final location of the SWM/BMP ponds, active recreation areas and internal trail alignment.

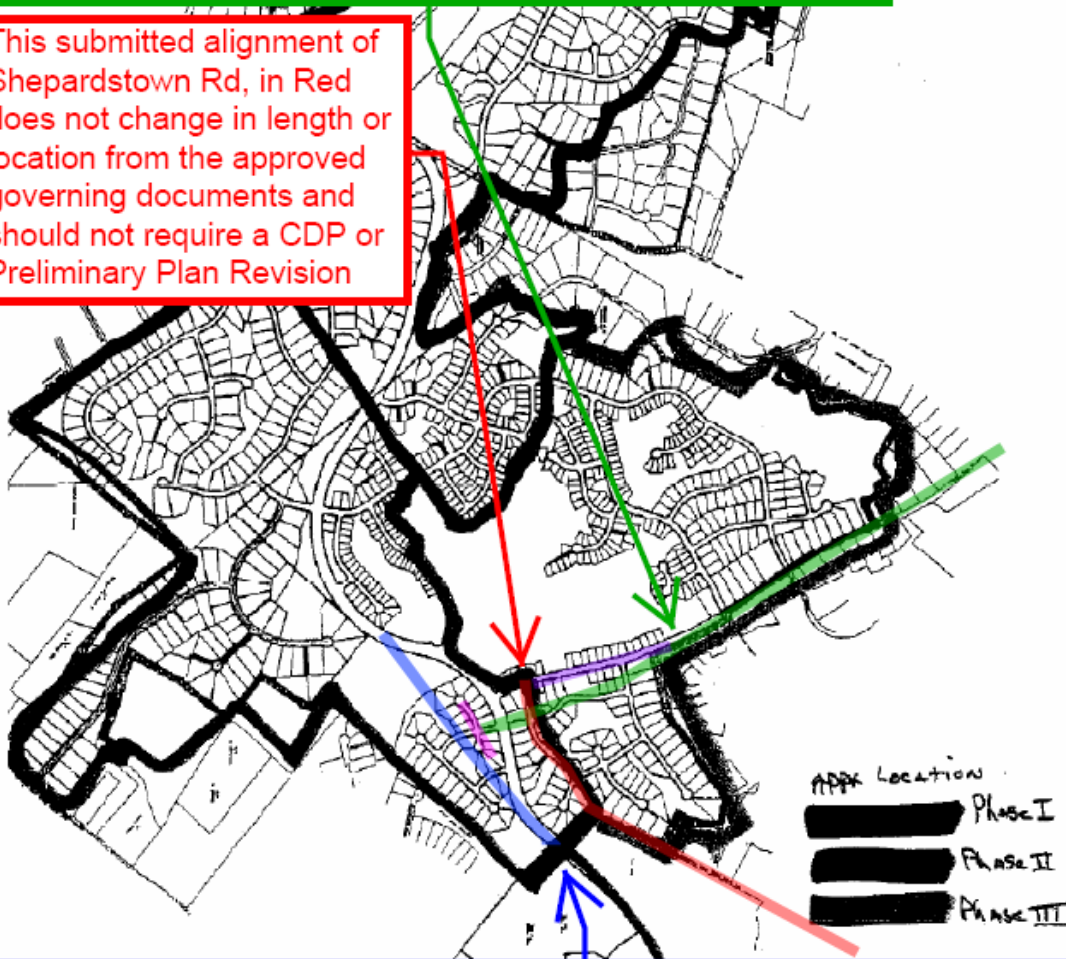
3. Land bay and lot configurations shall be in substantial conformance with the approved Concept Development Plan dated May 9, 2002, as determined by the Director of Community Development, unless final engineering reveals environment constraints, which prevent such conformance.
23. The street connections from the surrounding development to the Commercial/Recreation area shall be similar to those connections shown on the Brookside Farms Illustrative Plan prepared by The Engineering Groupe, Inc., dated November 5, 2001, and received in the Department of Community Development November 5, 2001.



Lake Drive's submitted alignment, in Green, deadends into a T-Intersection with the Pink Road. Neither Lake Drive or the Pink Road connect to the Parkway as mandated by the BOS.

Upon Final Engineering it was necessary to eliminate and move the Purple Lake Drive alignment away from the Lake Ashby due to environmental concerns including wetlands and soil, and due to the requirements of topography, drainage, structural safety and vehicular circulation. This improvement should not require a CDP or Preliminary Plan revision.

This submitted alignment of Shepardstown Rd, in Red does not change in length or location from the approved governing documents and should not require a CDP or Preliminary Plan Revision



The submitted alignment for this small section of the Brookside Parkway, in Blue, softened a dangerous curve between two Village Center crosswalks to the Recreation Area. It was also due to the BOS mandated elimination of the Lake Drive direct connection to the Brookside Parkway on the approved governing documents, and was necessary due to environmental concerns including floodplain, wetlands and soil, and due to the requirements of topography, drainage, structural safety and vehicular circulation. This improvement should not require a CDP or Preliminary Plan revision.